IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

OP.No. 17105 of 1997(J)

PETITIONER:

A.AMMU, W/O.LATE SHRI.N.GOVINDAN,
5/13, VENKATASWAMI STREET, PONNAPPA NADAR
COLONY, NAGERCOIL – 629 004.

BY ADV. SRI.B.REGHUNATHAN,
SRI.G.GOPALAKRISHNA PILLAI

RESPONDENTS:
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1. STATE OF KERALA REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695 001.

2. SECRETARY (EXCISE), BOARD OF REVENUE (EXCISE) THIRUVANANTHAPURAM 695 033.

3. ACCOUNTANT GENERAL (A & E), KERALA THIRUVANANTHAPURAM 695 039.

BY GOVT PLEADER SMT.SMITHA SUKUMAR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 01/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.30477 OF 1997 IN OP NO.17105 OF 1997 J

//DISMISSED//

01.06.2007. SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.

APPENDIX

PETIITONER'S EXHIBITS:

EXT.P1: TRUE COPY OF G.O.(P).NO.146/86/FIN. DT.11.2.1986.

EXT.P2: TRUE COPY OF THE REPRESENTATION DT.17.2.1997 TO THE 1ST RESPONDENT.

EXT.P3: TRUE COPY OF LETTER NO.PA.1/K/943/96-97/1462 DT.24.3.1997 OF THE 3RD RESPONDENT.

EXT.P4: TRUE COPY OF LETTER NO.41215/PWC.A1/97/FIN. DT.25.6.1997 OF THE 1ST RESPONDENT.

EXT.P5: TRUE COPY OF G.O.(P).NO.437/92/FIN. DATED 24.6.1992.

/TRUE COPY/

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.NO.17105 OF 1997

Dated this the 1st day of June, 2007

JUDGMENT

The short issue in this original petition is as to whether the petitioner is entitled to liberalised family pension from the date of entitlement as per the scheme or from the date on which she had applied for such benefit.

2. Petitioner is the widow of late Sri.N.Govindan, who died on 18.11.1967. During his tenure, liberalised family pension scheme was not applicable to such persons. Such benefit was extended as per Ext.P1 scheme, with effect from 1.1.1986. It is not in dispute that she is entitled to pension under that scheme.

3. According to the petitioner, when she came to know about Ext.P1, she applied for consideration for being granted liberalised family pension. The stand of the respondents is that the petitioner, having applied only on 3.9.1996, her entitlement will be with effect from that date only and not from 1.1.1986, the

date on which Ext.P1 scheme came into force, in spite of the fact that she was widowed on 18.11.1967.

4. On the basis of the aforesaid contention, the controversy is as to whether the petitioner is entitled to be paid pension for the period from 1.1.1986 to 3.9.1996.

5. Entitlement to liberalised family pension or for any pension does not depend upon the date of application. It has to be on the basis of entitlement under the particular pension scheme. This is obviously, the law, as has been laid by this Court in **Aisha Kunju** v. **Deputy Director of Education** [2004(2) KLT 174]. I am in respectful agreement with the ratio of the said decision. Under such circumstances, this writ petition has necessarily to succeed.

In the result, the writ petition is allowed quashing Exts.P3, P4 and P5 and directing that the respondents shall pay the petitioner arrears of family pension as per Ext.P1, from 1.1.1986

to 3.9.1996. Though the petitioner has claimed interest at the rate of 18% per annum, having regard to the fact that the judgment relates to the interpretation of the scheme and appreciation of the constitutional rights of the petitioner, it is directed that the aforesaid amount shall carry simple interest at the rate of 6% per annum from 3.9.1996 till the date of payment. It is further directed that amounts as aforesaid shall be disbursed within a period of three months from the date of receipt of a copy of this judgment. No costs.

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.17105 OF 1997

JUDGMENT

1ST JUNE, 2007.

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